

*Doing less
to do more:
a new focus
for the EU*

Nick Clegg

Acknowledgements

I am particularly grateful to the following for the comments and encouragement they generously provided: Ben Hall, Charles Grant, Chris Huhne MEP, Lord Brittan, Miriam González Durántez, Peter Wilson, Richard Grayson and Vince Cable MP.

The views expressed in this publication are my personal views. All flaws and shortcomings are entirely of my own making.

Introduction

“Let us remember how often we have been made into a laughing-stock because we deal with things that are absolutely ridiculous, which defy common sense and conflict with the interests of our population”

Romano Prodi, President of the European Commission,
15 February 2000

There is a commonly held misconception that the design of constitutions and governments is shaped by logic. It is often forgotten that accident, coincidence and personalities play as great a role in the formation of our political landscape as do the underlying forces of reason or common sense. There is nothing perfect or immutable about the political environment we inhabit. It can always be improved.

Nowhere is this more obvious than in the European Union. Disciples of the view that European integration is “inevitable” believe there are historical forces driving the process forward which logically result in certain institutional and policy outcomes. Supranational European government is required to match economic interdependence. That, it is stressed, was the inspiring insight of the European Community’s founding fathers in the 1950s.

Whilst there is undoubtedly some merit to this deterministic view of European integration, it ignores the imperfect nooks and crannies of history. As some historians have shown, the birth of European integration was as much the result of the specific industrial needs of the Ruhr and Alsace-Lorraine regions and of the power of French farming interests as it was to do with the loftier logic of pooled sovereignty.¹

Indeed, one need only reflect on the enormous political and economic distortions created by Europe’s Common Agricultural Policy (CAP) to realise that logic has hardly prevailed. There is no good reason why a policy dedicated to a small and diminishing section of Europe’s

¹ *For a first class account of the origins of the European Coal and Steel Community and beyond, read Alan Milward’s ‘The European Rescue of the Nation State,’ Routledge, 1994*

population should have consumed the overwhelming bulk of the EU's financial resources, penalised Europe's consumers, discriminated against products from the Third World and generated endless political friction between the EU's member-states. Logic, surely, would have suggested that the pooling of sovereignty in the fields of say, external or internal security, rather than the invention of a convoluted mechanism of state support for one sector, should be the centrepiece of European integration.

Indeed, it is ironic that early attempts to create a European Defence Community in the immediate post-war years (blocked at the time by Communists and Gaullists in the French Assembly) should now be recycled in the EU's nascent security and defence policy. It is equally striking that an ambitious agenda of police and judicial co-operation, to tackle the common challenges of cross-border crime and immigration, should only have started to emerge seriously in the 1990s.

It is as if the EU, having taken a detour down some questionable by-ways in the last half century, is now finally getting round to tackling some of the more eligible issues for successful integration. This is crucial to the central propositions of this essay:

- ★ that the accumulated burden of policies, competences, tasks and budgets in the European Union has become too great;
- ★ that this, in turn, has created serious administrative strain in the EU's own institutions, and political confusion amongst European voters;
- ★ that without a serious streamlining of the EU's activities a deepening crisis of legitimacy in European integration will ensue;
- ★ that locating ill-justified powers at EU level can undermine democratic accountability;
- ★ that the time has therefore come to identify those areas in which EU action is neither logical, justifiable or workable;
- ★ and that such a trimming of EU activity will help free up the overburdened institutions and re-establish their political credibility, so that integration can proceed in those areas which clearly merit collective EU action.

A crisis of legitimacy

The EU is in the throes of a crisis of legitimacy. The symptoms are on ample display. The ever diminishing turn-out in elections for the European Parliament—it fell in all but three member-states during the 1999 Euro elections—is just one eloquent expression of popular disaffection and indifference towards the EU. The ignominious resignation of the Santer Commission in March 1999 gave way to an onslaught of criticism in most member-states against the perceived arrogance and insularity of the Brussels-based EU policy elite. The Council of Ministers remains an institution of enormous power, but it also remains largely closed to public scrutiny.

Anti-European populism is strong in a number of member-states. Jörg Haider's Freedom Party has struck an anti-European chord in Austria, support for European integration is weak in Scandinavia, and William Hague's Conservative Party is now organised around a fundamental rejection of the case for pooled sovereignty at a supranational level.

The European Commission, the institutional nucleus of the EU, is on the defensive. No longer judged according to its ability to identify new visions for European integration, it is forced to focus on internal housekeeping after decades of poor administrative practice. With the arrival of a new generation of pragmatic, unideological leaders in the largest EU member-states—Blair, Schröder, Jospin and Aznar—the European Council has assumed an almost Gaullist attitude towards EU policy-making. Heads of government increasingly act as an intergovernmental directorate, issuing instructions which they expect to be dutifully followed by the Commission and the European Parliament. Indeed, in his speech in Berlin in late June 2000, President Chirac of France pushed the intergovernmental argument to its logical conclusion by proposing a new 'secretariat' for a pioneering group of member-states, outside the existing institutional framework of the EU.

The potential for a full-scale political rout of the EU institutions is now greater than many of their inhabitants seem to appreciate. MEPs continue to call for greater power for the Parliament. But many appear oblivious to the possibility that, on present trends, turn-out in European elections may well

sink to as low as 20 per cent within the next decade in many member-states. Equally, with the passing of the Kohl-Mitterrand generation and the growing calls for a rejection of the “Monnet method” of integration—the traditional policy-making approach based on the prerogatives of the Commission—the Brussels-based administration is likely to find itself playing an increasingly passive co-ordinating role in EU policy-making. Whilst this may be a welcome development in some policy areas, a castration of EU institutions would lead to unpredictable leadership from a cabal of EU prime ministers, and that would be to the detriment of smaller member-states and of coherent policy-making.

If this drift towards institutional impotence is to be arrested, it is essential that the EU should take a critical look at the powers it has accumulated. Even the most cursory analysis would demonstrate that the EU is active in a bewildering array of areas where EU-level action is neither essential nor necessary, whilst other areas, notably external and internal security, suffer from a lack of effective EU integration.

The Commission has become weighed down by its executive responsibilities in managing an ever growing *acquis* of EU rules and programmes. Each new Commission, each new commissioner, each new European Parliament and each new presidency of the Council of Ministers aspires to launch a volley of EU initiatives. The momentum towards a relentless expansion of the *acquis* is constant.

Furthermore, the EU has become submerged in a blizzard of labour-intensive expenditure programmes. Almost unnoticed, the Commission has been transformed from its primary role as a policy innovator into an administration bogged down by the executive responsibilities of overseeing the spending of the EU's pooled budgets. Informal internal Commission estimates suggest that whilst 20 years ago 75 per cent of Commission officials were primarily dedicated to policy work, now well over half are occupied with programme management and implementation, leaving barely over 40 per cent to deal with policy matters.

The explosion of administrative and spending tasks in the Commission is most obvious in the field of overseas development and humanitarian assistance. The Commission is now one of the largest dispensers of development aid in the world. External assistance funds (€9.6 billion in 2000) account for 62 per cent of all programmes directly managed by the

Doing less to do more

5

Commission. Yet in the last five years the average delay in the disbursement of committed funds has increased from three years to four-and-a-half years. The backlog of outstanding commitments is, in certain cases, equivalent to more than eight-and-a-half years' payments.²

² See Commission communication 'On the Reform of the Management of External Assistance', 16 May 2000, and 'A European Foreign Policy', speech by Commissioner Patten, London, 16 June 2000

If the spending tasks in internal policy fields as diverse as agriculture, regional aid, tourism, research, youth, business development, culture and equal opportunities are added to the equation, the picture of administrative overload is complete. The European Commission—with only 23,000 staff, half the size of Birmingham City Council—cannot cope. The Parliament marches on as a relentless cheerleader for policy activism. The Council of Ministers remains tied up in interminable, behind the scenes horse-trading, unable to muster the political will or courage to tackle the fundamental challenges at hand. No wonder the legitimacy of the EU is at such a dangerously low ebb.

Restoring legitimacy

The conventional response to this crisis has been largely declaratory in nature. Thus the Birmingham summit in 1992 was dedicated to the need to strengthen the hallowed, but often abused, principle of subsidiarity—the idea that political decisions should be taken at the lowest level that is compatible with effective and efficient governance. Since then, an ‘inter-institutional agreement’ on the application of subsidiarity has been drafted, and a protocol on the application of subsidiarity and proportionality was appended to the Amsterdam treaty, supplemented by a declaration aimed at improving the quality of legislative drafting. The European Commission has dutifully produced a report every year since 1993 on the application of these principles. Heads of government were even moved to convene a special summit, in Pörtlach in October 1998, to “bring the EU closer to its citizens”.

Yet this battery of declaratory intentions has done nothing to alter the fundamental issue at hand: a serious imbalance in the accumulation of powers, policies and budgets within the EU.

The allocation of competences is commonly understood in terms of efficiency: that measures should only be promulgated at European level if that is the most effective level at which the challenge in question can be tackled. European policies for European problems. Indeed, the debate about “subsidiarity” and “proportionality” is usually cast in terms of efficiency—the need to establish an appropriate fit between policy challenges and policy instruments.

But there is also a wider question of democratic legitimacy at stake. If a policy competence is delegated upwards to the European level when it does not in fact require European action, the domestic (national, regional or local) political environment is deprived of a legitimate matter for political debate. The electorate can be disenfranchised as local issues are elevated beyond the reach of the domestic politicians whom they rightly wish to hold accountable for domestic policy matters.

Doing less to do more

7

The recent debate about the extension of the EU's working time directive serves as a useful illustration. The amended directive is to be applied to junior doctors throughout the EU. This has elicited a great deal of media comment in the UK and, to a slightly lesser degree, Ireland, where junior doctors are in short supply compared to other member-states and work significantly longer hours. Understandably, the medical profession has welcomed the directive as a means by which the burden on overworked junior doctors can be lightened, and most politicians from all parties have accepted the desirability of the directive. As a consequence, discussions have focused on the detailed substance of the proposal, particularly the transition periods required by Britain and Ireland for its implementation.

Yet a fundamental question remains, on the merits of applying EU working time legislation to junior doctors at all. It would be difficult to imagine an issue which is closer to the main arteries of local and national political debate than the working conditions of junior doctors, particularly in a country such as Britain where anxiety about the state of the National Health Service has reached fever pitch. On exactly these kinds of issues are elections won and lost.

The electorate is entirely justified in turning to local and national politicians for improvements to their local health services. There is no objective rationale for European legislation on the working hours of junior doctors. When I have asked officials in the Commission and colleagues in the European Parliament why they are enthusiastic about the extension of the directive to junior doctors, two responses are usually given: that citizens from other member-states should expect a high minimal level of service from junior doctors elsewhere in the EU when they travel; and that since national governments of different parties in Britain have failed to curtail excessive working hours for junior doctors, it is a jolly good thing that Europe is filling in where Westminster has failed.

The first argument bears no scrutiny. If the uniform treatment of travellers from EU member-states were to become the standing justification for European action, then the EU would need to intervene in every aspect of daily life and steadily erase all diversity. It would lead to a level of harmonisation well beyond that seen in the United States and other federal systems.

The second response needs to be taken more seriously because it is more widely held. Particularly amongst politicians from parties which have been

out of power for some time, Europe has often been regarded as a route by which policies blocked at home can be reintroduced. Margaret Thatcher was not entirely wide of the mark when she accused some supporters of European integration of wanting to introduce “socialism by the back door”.

Yet domestic policy failure should never become the motivation for European policy initiatives. It is, naturally, a scandal that British junior doctors have to work such long hours.³ But UK politicians must remain answerable for that

³ *Figures from the British Medical Association (1999) show that one in three of Britain's 35,000 junior doctors work over 56 hours per week, or 72 hours if on-call time is included*

failure. Removing the issue from the domestic political arena altogether disenfranchises British politicians and confuses British voters. Any democracy rests on the assumption that politicians can be held accountable by voters for decisions taken under their authority. Removing issues from one level of government to another, without clear justification, runs the risk of disrupting the fundamental understanding upon which the relationship between the electorate and the elected is established.

This is, of course, the essence of the argument forwarded by eurosceptics against European integration in general. It is undeniable that the accusations they level against the EU in cases such as the working time directive, where the justification for European action is weak, carry some weight. But they depart from all logic when they claim that there are no, or only extremely limited, circumstances in which any European action is merited. That is why it is of such crucial importance to remove from the EU's statute books those matters which continue to give grist to the anti-European mill. The persistence of ill-considered European action merely perpetuates the fundamentalist character of much political debate surrounding the EU. It allows Eurosceptics to elevate each issue into a mini-referendum on European integration. The removal of as many of the offending items as possible would deal a heavy blow against anti-Europeans everywhere.

It is equally essential to recognise that without the devolution of powers that cannot be justified at EU level, it will become increasingly difficult to argue successfully in favour of new EU powers. Pro-Europeans who argue against the devolution of existing powers because they fear the whole EU edifice may unravel are shooting themselves in the foot. The reverse is more likely: without the devolution of some existing powers, the administrative and political strains within the EU will become increasingly difficult to contain. Only by showing the electorate that power can be handed down will it be

Doing less to do more

9

politically possible to advocate the handing up of new powers. To move on we must first learn to clear up.

This is particularly so if the flip-side to the democratic rationale for the devolution of existing EU competences is considered: the democratic rationale for the *evolution* of EU powers. Just as voters are disenfranchised if powers which should belong to local or national politicians are arrogated to the EU, they are equally disenfranchised if powers are retained by local and national politicians in areas which have moved beyond their effective competence.

Politicians tend to claim they have control over matters which are beyond their reach. This can leave voters short-changed, since they elect their representatives on wildly inflated expectations. Subsequent disappointment in the performance of politicians gives way to cynicism and public indifference. That is why the well-justified elevation of competences to the European Union is a means by which democratic politics can be reinvigorated and voters re-enfranchised. There is, of course, an important caveat: the EU's decision-making processes should be subject to proper parliamentary oversight. Otherwise, as is sadly still the case in many policy areas, policy-making is transferred beyond the reach of politicians and directly into the hands of the executive, whether European (the Commission) or national (governments and civil services). That is the indispensable justification for the European Parliament and for strengthened scrutiny of EU legislation by national Parliaments.

The ongoing debate surrounding justice and home affairs in the EU provides a clear illustration. It has been the habit of local and national politicians everywhere to claim that they can deliver on promises concerning law and order. Yet the globalisation of crime—particularly in the trafficking of drugs, money laundering, the arms trade and child prostitution—renders many of those claims hollow. It has become increasingly evident that if politicians wish to bolster the internal security of their citizens against such threats, they can only do so by proceeding further with European integration.

This realisation has resulted in a significant evolution of EU powers in migration policy and the fight against crime, by way of the Maastricht and Amsterdam treaties and related institutional developments such as the creation of Europol. Haltingly, the European Union is developing the capacity to deal with the reality of cross-border crime. In doing so, it strengthens the relationship between voters and their representatives, since politicians are

equipping themselves, by way of the development of new EU competences, with the means of responding to voters' concerns.

Whilst this virtuous circle still has some way to go (particularly the absence of effective parliamentary scrutiny at national and European level), the lesson of principle is clear. Just as democratic legitimacy can be undermined when unjustified powers are elevated to the EU level, so can democratic legitimacy be strengthened when powers are elevated to the EU level for good reason. The challenge is to get the right balance between justified European action and the legitimate retention of powers by lower levels of government. At present, the ad hoc nature of European integration has led to an uneven allocation of competences in which some EU powers are excessive and others woefully lacking.

Refocusing the Union

The EU should adopt a package of specific, concrete proposals which would streamline its over-stretched statute book and free up resources in its over-burdened institutions.

An inter-institutional approach

First, all three principal institutions—the Council, the European Parliament and the Commission—must forge a strong inter-institutional approach to the problem. Such an important exercise cannot be successfully undertaken if it becomes a subject of territorial debate between the institutions.

The Commission has already signalled its willingness to look at the need for a rationalisation of its activities. Romano Prodi has asked each head of department within the Commission to identify responsibilities which could be streamlined if the staff available to the Commission were reduced. Commissioners have undertaken a novel exercise of peer group review, in which the focus and resources of each policy area are scrutinised. Prodi has also promised to produce a more wide-ranging paper on “governance” in the first half of 2001.

The problem is that such an ambitious rationalisation of resources and priorities cannot be achieved by the Commission on its own. The results of the Commission’s internal deliberations have far-reaching consequences for EU policy-making in general. It is doubtful whether the outside world will be prepared to accept a new blueprint from the Commission uncritically. The Parliament, in particular, will be disinclined to swallow extensive proposals from an executive over which it is supposed to be exerting political control and guidance. And member-states are hardly in the mood to receive radical political musings from the head of a Commission which has not yet fully proved itself.

Thus Prodi should convene a High Level Working Group with leading representatives from the European Parliament, the Council of Ministers (preferably at Ministerial level) and key academics and/or commentators. The High Level Working Group would draw on the work already conducted

within the Commission and aim to produce a concrete set of proposals to re-orient the scope of EU policy-making. Whilst this may seem an unwelcome suggestion at a time when the Council is embroiled in yet another inter-governmental conference, and when the Parliament and member-state representatives are submerged in drafting a Charter of Fundamental Rights, it is an essential procedural step if progress is to be made.

Such a group should be convened urgently and should present its working objectives to the European Council at the Nice Summit at the end of 2000. If the Commission can secure broad support for the direction of the group's work in Nice, it will be in a much stronger position to unveil its planned report on "governance" in 2001 with the tacit blessing of both the Council and the Parliament.

On the other hand, if President Prodi fails to forge a close and formal working relationship with the Council and the Parliament, he will be inviting a sceptical response from both. The Parliament is especially nervous of any perceived assault on EU competences. Prodi must ensure that his endeavours are not automatically interpreted by the apostles of EU integration in the Parliament as an attack on their interests. He must work methodically by way of the High Level Working Group to illustrate that a devolution of some powers is administratively necessary and politically essential, in order to safeguard further integration in the future.

The annual work programme

It is customary that governments make quite a song and dance about their legislative programmes. The annual pomp and ceremony of the Queen's speech at Westminster is perhaps the most elaborate expression of this important moment in any government's political calendar. It is right that governments should be forced to spell out their legislative plans so that a full debate on the direction and content of government policy can take place.

Given that national parliaments now find themselves digesting as much European as domestic legislation, it is striking that the annual legislative cycle of the European Union remains almost impossible to follow.

For instance, Romano Prodi delivered a major speech on 15 February 2000 to the European Parliament—billed as a 'State of the Union' speech—setting out his political priorities for the coming five years. A lengthy and rather inconclusive debate ensued in which MEPs from each political party

Doing less to do more

13

highlighted those aspects of the speech they welcomed and complained about those aspects which had been omitted.

Bizarrely, Prodi's address made only passing reference to the detailed legislative proposals he was planning to make to the Parliament and Council. The Commission possesses unparalleled authority among EU institutions by virtue of its sole prerogative to propose legislation. It is the source of all EU legislation and the gatekeeper to the accumulating body of European law.

The Commission's detailed proposals for new legislative and non-legislative instruments emerged in a separate document entitled 'The Commission's Work Programme for 2000'. This consisted of twelve pages of prose, summarising action in each policy area, followed by a 23-page annex listing—in almost unreadable fine print—the precise measures proposed. The annex provided no explanation or justification for each of the measures proposed. It merely provided the title and target date for each new initiative. It included 257 new legislative measures and 246 new non-legislative measures (including "autonomous" measures adopted by the Commission itself). In many respects, it bore little relation to Prodi's grander 'State of the Union' address.

This is a preposterous way to launch legislative business: opaque, unsystematic and devoid of any meaningful parliamentary control. In response, the third largest group in the European Parliament—the Liberal Group—decided for the first time to withhold its approval of the Commission's annual work programme. The group insisted that in future each measure should be more fully described and justified. In addition, the group proposed that detailed discussion should take place in the Parliament's specialised committees to scrutinise the proposals made in each policy area.

A more transparent and rational approach could thus take the following form: the President of the Commission delivers his/her 'State of the Union' address at the beginning of each parliamentary year (in September), outlining the main policy and legislative proposals; at the same time a detailed document setting out all proposed legislative and non-legislative initiatives is published, including a clear explanation and justification for each measure proposed; and the Parliament's committees would then be able to subject the list of proposed measures in each policy area to detailed scrutiny, combined with a systematic grilling of the relevant commissioner(s). On the basis of the committee deliberations, a fuller debate could then take place in the

14

Parliament as a whole, followed by a final vote on the Commission's work programme.

An important and novel added variant could include the participation of a delegation of national parliamentarians. Each year, parliamentarians from all national parliaments could join the debate in the European Parliament on the proposed annual programme. Thus national sensitivities, particularly concerns about subsidiarity, could be accommodated at an early stage.

There is, of course, no guarantee that such a new procedure would necessarily prevent legislative overload. Indeed, it is possible in some areas (notably environmental and social policy) that MEPs would use their enhanced leverage over the Commission's work programme to demand additional and unnecessary action. But experience suggests that when the European Parliament is obliged to assume hands-on responsibility, it has a moderating effect. At present, MEPs tend to scour the Commission's list of initiatives for their own pet measures and dismiss the rest. If MEPs were forced to evaluate the full extent of the Commission's proposals in committee, in liaison with national MPs, their knee-jerk policy activism would probably be moderated, in light of the sheer scale of the legislative work programme.

An additional option would be the formation of a specialised standing scrutiny committee in the European Parliament, charged with ensuring that Commission proposals meet basic criteria for action at EU level. Members of such a committee would need to have a particular expertise in legal and budgetary matters. It could be formed around the existing Legal Affairs committee. This already acts as a brake, at times, on the launching of new initiatives. In June 2000, for example, many of its members questioned the rationale for an EU tobacco directive, setting new tar and nicotine limits and new health warnings, on the basis that it was primarily a health measure rather than a single market proposal.

This new committee would clearly not be able to scrutinise each and every new measure, but could pick those which look questionable. The 2000 work programme, for instance, includes measures such as a green paper on 'public transport and private cars in the urban context', a regulation on 'health conditions for the movement of pet animals' and a recommendation on 'alcohol consumption by children and adolescents'. The sector-specific committees could refer such dubious proposals to the standing scrutiny committee for adjudication.

Doing less to do more

15

Again, there is no guarantee that such a scrutiny committee would encourage a more even-handed parliamentary response to the Commission's work programme. But it is clearly necessary if the Parliament wishes to develop its constitutional role as a proper political check on the right of initiative of the executive. Indeed, it is not impossible to imagine that MEPs would undertake this crucial role with vigour, and so act as a serious filter for all new EU proposals.

Controlling the budget

Money has long played a crucial role in the construction of the European Union. The total sums involved are, in relative terms, very small. The EU budget presently amounts to 1.1 per cent of EU GDP, while total spending by public authorities in the EU is equivalent to 46 per cent of GDP. But how these funds are used remains one of the most potent issues in EU politics.

The Common Agricultural Policy (CAP), which still consumes almost half of the total EU budget, is a permanent thread through all the controversial debates in the EU, from international trade, to enlargement, to the equitable division of national budgetary contributions to the Union's coffers. The Structural Funds, the second largest component of the EU budget, are an expression of political solidarity. They have been instrumental in assuaging the concerns of new member-states, particularly from the South, that EU membership would impose excessive competitive pressures on their economies. Whilst the size of the Structural Funds is small (around a third of the total EU budget), they have assumed an almost sacrosanct political status. No wonder that the most controversial aspects of the enlargement negotiations with the candidate countries are likely to be budgetary in nature, particularly with regard to the eastward extension of the CAP.

It is thus impossible to envisage a spring cleaning of EU competences without addressing the budgetary implications. The overriding need is to ensure that money allocated in the budget relates directly to the priorities identified in the EU's work programme. Policy priorities, not pork barrel politics, should determine whether and how money is spent in the EU.

In this light it is remarkable to note that the preliminary draft budget for 2001, unveiled by the European Commission in May 2000, was the first to be clearly subdivided according to policy areas. Neil Kinnock has recently insisted that the Commission's work should henceforth be guided by "activity-based" management principles, with budgets allocated more precisely to

activities undertaken. These are clearly welcome developments. But it is surprising that it should have taken so long to introduce the most elementary form of budgetary clarity into the EU's administration.

Equally, it is worth noting that until recently, it was possible for budget lines to be created without a clear "legal base". In other words, budgets could be formed irrespective of whether the activity funded by the budgets related to the formal powers of the EU institutions. In a notorious case, the British government, backed by Germany and Denmark, took the Commission to the European Court of Justice in 1996, to block trial 'social exclusion' grants from being used in the EU's third 'poverty action programme'. London argued that the use of these funds was unwarranted, given the lack of a clear legal base. In 1998, the Court found in favour of the UK (the Commission had in the meantime withdrawn the proposal). This ruling finally clarified the requirement that all EU budget lines should have a legal foundation in the treaty.

Yet old habits die hard. There is a plethora of budget lines without a clear legal base which continue to receive annual replenishment from the EU budget. The wheeze by which MEPs, in particular, have managed to circumvent the ECJ ruling is simple. Pet projects, particularly think-tanks and grass roots organisations, are funded directly from the administrative section of the budget—even though the projects in question are unrelated to the administrative costs of the EU itself. Thus a number of small organisations ranging from the 'Our Europe Association' to the 'Latin American Centre for Relations with Europe' are directly funded by budgets which are supposed to cover the administrative expenses of EU institutions. There are even two budget lines (one created last year) aimed at supporting 'Organisations Advancing the Idea of Europe'.

The financial significance of these dubious budget lines should not be exaggerated. The subsidies granted under the relevant budget heading amount to just over €30 million, a tiny fraction of the total €90 billion budget. But such expenditure, particularly in the hands of the special interests within the European Parliament, is vulnerable to lobbying which bears little relation to the objective merits of the organisations in question.

Parliament's habit of throwing relatively small amounts of money at arbitrarily picked beneficiaries is exacerbated by a tendency in the Commission to attach small budgets to each and every policy initiative. For

Doing less to do more

17

example, €300 million was recently allocated by the Commission to implement its Action Programme in health (2001-2006),⁴ €50-60 million was proposed in the new fifth framework programme on gender equality (including the establishment of a European Gender Institute),⁵ and €20 million was allocated to the DAPHNE programme (2000-2003) to counter violence to children, adolescents and women.⁶

⁴ *Commission announcement, May 2000*

⁵ *Presentation by Commissioner Diamantopoulou to the Women's Rights Committee of the EP, February 2000*

⁶ *Formally adopted by the Council in December 1999*

Recently the Parliament's trade and industry committee decided to launch a monitoring exercise of the budget lines related to the policy areas within its remit. The sheer number of hitherto unheard of budget lines came as a surprise to many of its members. Budget lines included €13.8 million for the 'promotion of energy efficiency', €9.8 million for the 'promotion of the European presence in global networks', €29.3 million for the 'stimulation of small and medium-sized enterprises' and €14.7 million for 'enhancing sustainability'. It is doubtful that more than a small handful of officials and MEPs in Brussels are aware of the total number of budget lines now in operation within the EU.

Naturally, the intentions behind most of these programmes are laudable. They deal with issues of enormous social, cultural and political significance. But these causes are not necessarily well-served if the impression is given that such token amounts of money will help achieve the stated objectives. Rarely is it asked whether these relatively small sums can make a serious contribution to, for example, the commercial fortunes of small and medium-sized enterprises, of which there are hundreds of thousands scattered across the EU.

The problem, of course, is that budget lines have become the play-things of politicians. The Parliament, in particular, is loath to give up its role as a key arbiter in the allocation of EU *largesse*. Doubts about the viability of budget lines is generally taken as criticism of the objectives of the programmes themselves. Thus MEPs are reluctant to risk vilification by questioning such uses of the EU budget.

Yet the bureaucratic machinery of the EU is groaning under the sheer weight of the administrative burden incurred in executing all the EU's budgetary responsibilities. The case for radically streamlining the EU budget is overwhelming. It could be done as follows:

First, all small budget lines should be reviewed and, where possible, deleted altogether. It is hypocritical of the Parliament, and to a lesser extent the Council, to criticise the Commission for its administrative shortcomings whilst continually adding new, labour-intensive budget management tasks. Small project or sector-specific budget lines have the double disadvantage of being too small to meet the objectives set for them, whilst still requiring significant Commission personnel to manage them. These resources should be freed up and allocated to higher priority tasks within the Commission.

Second, the practice of allocating budgets without a legal base under the administrative expenditure of the EU should cease immediately. This should be accompanied by an increasingly rigorous application of the “activity-based” budgeting recently introduced by the Commission.

Third, the Commission must refrain from adding budget allocations to each and every new policy announcement. In principle, there should be no budget allocations at all in the areas which are not core functions of the EU. Tourism, media, education, health and youth programmes should, in particular, be subject to a rigorous review. Whilst the budget lines attached to these areas might enjoy public support, they should not be continued unless a clear and objective justification for European action can be demonstrated.

Fourth, the management functions of the Commission in the administration of overseas development aid should be transferred to a specialised, independent agency equipped with the necessary human resources (both in terms of number of staff and appropriate skills). The recent proposals from Commissioner Chris Patten are a bold start in exactly the right direction.⁷ He has been right to state unequivocally to the member-states that the Commission will simply refuse to take on new tasks in this field until the necessary administrative resources are in place.

⁷ *‘On the Reform of the Management of External Assistance’, 16 May 2000*

The truth is that the Commission was never equipped to deal with the highly-specialised tasks related to overseas aid in the first place. The Commission is not the World Bank. It was designed to be a policy initiator, a crafter of legislation and a leading protagonist in the political debate about European integration. It is now essential that the Council and the Parliament give the green light to Mr Patten’s proposals. But these should be the first step in a process that will lead to the creation of an entirely separate and independent executive overseas development agency which would take over almost all the

Doing less to do more

19

present management responsibilities shouldered by the Commission. This would relieve the Commission of a burden it has patently been unable to bear and allow it to focus on policy development rather than administration.

Fifth, there are a number of so-called Community Initiatives—such as the ‘Urban’, ‘Leader’ and ‘Interreg’ programmes targeted at objectives as diverse as inner-city urban deprivation, local rural projects and cross-border co-operation—which are presently managed directly by the Commission. Again, these funds are undoubtedly popular and aimed at important ends. But it is difficult to make the case for the direct administration of a large number of small-scale projects in Europe’s cities, villages and border areas from Brussels. It is an example of administrative centralisation which sits uncomfortably with the bottom-up, small scale nature of the projects funded. Furthermore, there is plenty of evidence to suggest that these projects could be more effectively co-ordinated with the development programmes managed at regional or local level. Thus the role of the Commission in administering Community Initiative budgets should also be reviewed.

Finally, there is of course the wider issue of the use of very large budgets to support agriculture, the Structural Funds, and research and development programmes. It is not possible here to rehearse all the arguments concerning the reform of these large spending programmes. But one thing is clear. The role of these funds as an economic (and, perhaps more importantly, as a political) glue in the EU is changing. The Common Agricultural Policy clearly possessed a very different significance in the 1950s and 1960s, when much of continental Europe was still a rural society and when memories of food shortages were fresh. But rural communities have shrunk dramatically in the intervening years and concerns related to food safety are now of a wholly different order.

At the same time, enlargement of the EU to central and eastern Europe cannot proceed without further far-reaching reform of the CAP and the Structural Funds. It is virtually impossible to imagine that the present budget allocations to member-states would extend automatically to the new entrants. The choice seems to be either an EU divided between the haves and have-nots, in which the new member-states accept a smaller share of the cake than that enjoyed by the existing members. Or, an EU in which the common resources are spread more thinly across an expanded membership. This, in turn, might lead to a degree of “repatriation” of these policies, with national governments

choosing to provide resources to farmers and deprived regions which had previously benefited from large EU allocations.

Either way, the role of money in the EU is set to change. Members will, by force of circumstance, benefit less from fiscal transfers through the CAP and the Structural Funds. Despite the inevitable short-term political tensions, this will in the long run be a healthy development. Not least, it may allow institutions such as the Commission to focus on policy priorities rather than on the Byzantine management of convoluted mechanisms such as the CAP.

Other benefits of EU membership—such as access to the single market, environmental protection, authority on the international stage and enhanced external and internal security—will increasingly be recognised as of greater value than fiscal transfers from the EU budget. Taking the money out of EU politics is a worthwhile objective.

Does the EU need a social policy?

It is extremely hard to reach a consensus on those policy areas which should not be dealt with at EU level. There are, after all, different ideological conceptions of what Europe should do. One of the greatest fault lines in the European debate is that between a “liberal” conception of European integration, and the vision of a “social Europe”. The former, whilst emphasising economic integration, the protection of fundamental rights, the promotion of internal and external security and the attainment of high environmental and consumer protection standards, is reluctant to see EU policy activism in areas such as health, education and, most importantly, social policy. The belief in a “social Europe”, on the other hand, derives from the view that economic integration should be counterbalanced with measures, particularly in the social field, which aim to “protect” workers from the competitive pressures unleashed in a single market.

Broadly speaking, it is fair to say that the liberal vision of European integration has been in the ascendant in recent years. It is, for instance, revealing to note that Jacques Delors, formerly a leading proponent of a “social Europe”, recently told the French parliament: “I believe that areas like education, health, employment and social security, in short everything that creates social cohesion, must remain national competences... We need to realise that if the Charter [of Fundamental Rights] contains social rights as foreseen, its incorporation into the treaty will lead to a further transfer of competences, to which I am opposed, because I believe that social issues must essentially remain the competence of states”.⁸

*⁸ Evidence to the
French Senate’s
EU Committee
5 April 2000*

The claim from advocates of a “social Europe” that detailed social legislation is required at European level, to offset the effects of the single market, rests on a flawed assertion. This is that the best level for the implementation of social protection is the level at which economic deregulation unfolds. If economic deregulation is brought about at European level by the single market then, so the argument goes, social protection must be constructed at European level too. In reality, of course, social protection can be most effectively administered at lower levels, irrespective of the level at which economic deregulation operates. There is no evidence to suggest that

social policy must “match” wider economic policy in Europe. Indeed, the experience of those economies in the EU which have succeeded in optimising both welfare and employment, such as Denmark and the Netherlands, suggests that social policy will produce the most beneficial results when administered at the appropriate national and local level.

The uncomfortable truth is that the call for an EU social policy has increasingly become a political *leitmotif* for many on the left, rather than anything to do with objective considerations. The heavy emphasis placed on a “social agenda” during the French Presidency of the EU in the second half of 2000 is, for instance, as much a rhetorical sop to the government’s Socialist and Communist backbenchers as anything else. Indeed, the French government has been strikingly slow to produce any concrete suggestions for the social agenda itself, preferring to leave the floor open to ideas from the European Commission.

Fans of a “social Europe” also assert that without minimum guarantees across the EU, “social dumping” will occur, with investors gravitating towards economies with low social standards. Again, this argument bears little scrutiny. If this were the case, it would be difficult to explain why, for instance, the stock of foreign direct investment is, according to authoritative new evidence, rising sharply in France, a country with notoriously high welfare costs, and dropping in the United Kingdom, a country commonly accused of maintaining “Dickensian” social provisions by its continental critics.⁹ It also ignores the complex reasons why companies choose to locate their investments in the way they do. There is ample evidence to suggest that monetary policy, high educational standards, sound transport and communications infrastructure, language, cultural factors and geographical location all outweigh simple labour (and non-wage) cost calculations when investment decisions are made.

⁹ According to a report by Ernst & Young (May 2000), the UK’s share of new inward investment in Europe dipped from 28 to 24 per cent in 1999, whilst the share won by France jumped from 12 to 18 per cent

The wobbly intellectual foundations of EU social policy are reflected in the measures already on the statute book. Since the mid-1990s, around a dozen new EU laws in the social field have entered the statute book. Some are eminently sensible, such as a 1998 directive safeguarding the supplementary pensions of self-employed workers moving within the EU. Others, such as the directives on parental leave and part-time work, were the subject of agreement between the so called “social partners” (employers and employees), and so at least have the virtue of being self-

Doing less to do more

23

imposed. Still others, such as the working time directive, the directive on young people at work, or even the directive on pregnant workers, may be laudable in intention, but patently fail on any reasonable test of subsidiarity.

There are around 20 legislative proposals still in the pipeline. Again, some are sensible, such as the package of anti-discrimination framework legislation that is currently wending its way through the system. Whilst the more hysterical British newspapers have branded these proposals as the latest *dirigiste* onslaught from Brussels against Anglo-Saxon entrepreneurialism, the truth is more mundane. Most of the measures either enshrine practices which already prevail in the UK (and the US), or codify case law established by the European Court of Justice. Accusations that the anti-racism directive overturns centuries of British legal custom by reversing the burden of proof (and thus condemning the innocent until they have disproved their guilt), overlook the shared burden of proof that operates in UK civil discrimination cases, notably in cases of gender discrimination.

Yet other pending proposals are worryingly cavalier. A notable example is a 1998 Commission proposal to make the consultation of employees in all companies with more than 50 (or, if the European Parliament were to have its way, 30) employees obligatory throughout the EU. Again, this is a proposal driven by an ideological belief in a particular form of employment practice, rather than a considered analysis of the best level at which such an obligation should operate. As it happens, I am a strong believer in greater transparency and accountability in the way that employers take decisions governing their workforce, and I believe that statutory enforcement is required. But I would find it impossible to explain to a local family firm, which is unlikely to have any commercial connection whatsoever with the Single Market, why the obligation to consult internally should emanate from Europe. Equally, whilst I welcome binding standards governing the work of young people, pregnant workers, junior doctors and lorry drivers, I would be at a loss to explain why their working conditions are now the responsibility of European institutions, rather than local or national politicians.

These tensions within EU social policy have recently come to the fore. The conclusions of the Lisbon and Feira Summits during the first half of 2000, for instance, stressed the need for the modernisation and reform of the European “social model”, placing great emphasis on an “open method of co-ordination”. This welcome new method purports to deploy guidelines, benchmarks, targets and peer group review rather than detailed legislation.

Equally, the Commission in June 2000 produced a communication on a new "Social Policy Agenda" setting out priorities for the coming five years, also placing heavy emphasis on co-ordination rather than legislation. It explicitly stated that "this new Social Policy Agenda does not seek to harmonise social policies. It seeks to work towards common European objectives and increase co-ordination of social policies in the context of the internal market and the single currency."

Yet during the internal debate on the Commission's paper, it was widely reported that some Commissioners were pushing hard for the inclusion of the harmonisation of fiscal policy (presumably related to social security provisions). Furthermore, whilst much of the explanatory prose in the Commission communication is beyond reproach, the list of proposed actions in the document's annex could easily evolve into specific legislative initiatives, which would be at variance with the stated attachment to non-binding co-ordination. Thus the annex includes references to consultations on "common criteria concerning sufficient resources and social assistance in social protection systems", to a "reflection group on the future of industrial relations", and to the need to identify "areas of common interest including those offering the best possibilities for collective bargaining".

In the long run, the EU must radically simplify its approach. It should pursue the orientation set out at the Lisbon Summit and settle for a coherent social policy based on policy co-ordination rather than legislative obligation. Any future legislation should be horizontal, rather than issue- or sector-specific, aimed only at promoting the free movement of workers and enshrining fundamental rights (such as anti-discrimination). Ideally, the misguided directives which have already entered the statute book should, over time, be withdrawn, perhaps by way of the introduction of sunset clauses. The High Level Working Group and Mr Prodi's white paper on governance should propose a European Council declaration to give explicit guidance on the limits to any future EU social policy. This should include a specific prohibition on issue-specific legislation (unless it can be proved categorically that the objective in question can only be attained at European level). The bias must be in favour of reticence rather than policy activism.

The High Level Working Group should also endeavour to simplify the Byzantine legal complexity which presently governs EU social policy. The social provisions of the Treaty have been amended and re-amended almost without pause since the introduction of new health and safety provisions in

Doing less to do more

25

the Single European Act, not least by way of the infamous Social Chapter agreed at Maastricht. EU employment policy is also governed by the so-called Cardiff, Luxembourg and, most recently, Lisbon processes. Such a plethora of overlapping initiatives, processes and legal bases makes a mockery of transparent policy development. Ironically, most of them were initiated in the name of the long suffering "EU citizen". It is doubtful whether even a fraction of EU citizens are aware of the actions undertaken to "protect" their social interests at EU level.

Finally, the calls for a wholesale redefinition of "social Europe" by way of the Charter of Fundamental Rights should be strongly resisted. Since one of the stated aims of the Charter is precisely to delineate the boundaries between legitimate European and national action, it would be perverse if it were to be used as an instrument for making these already blurred boundaries all the more confused.

Defining the EU's core activities

If progress is to be made in cutting back on non-essential EU activity, such as in social policy, it is essential to establish a firmer notion of the key objectives of the EU.

The following policies, for instance, are widely accepted as lying at the heart of the EU: the implementation and extension of the single market (including action against anti-competitive practices and the dismantling of monopolies); the attainment of high environmental standards in areas beyond the scope of national authorities; high standards of consumer protection within the single market; the development of an integrated transport system, particularly in the air and rail sectors; the exploitation of economies of scale in common research and development policies; an effective common external trade policy; the development of coherent policies on asylum, immigration and the fight against international crime; the emergence of a workable common foreign and defence policy, including the capacity for Europe to speak with one voice in international fora; the incorporation of new members into the European Union, including the provision of substantial material and technical assistance to them; and continued reform of the administrative and institutional mechanics of the EU.

Equally, certain policies immediately spring to mind which would be difficult to construe as "core" competences: tourism, education, media and culture, health and sport. These policy areas would be best left, in totality, to member-states.

In this light, it is somewhat dispiriting to note that in recent months the Commission has produced two largely vacuous communications on sport (one on the "social function" of sport, the other on combating doping). The 2000 French Presidency, in a manner common to most EU Presidencies, has jumped onto this latest policy bandwagon by elevating sport into one of its headline priorities. Meanwhile, in May 2000 the Commission proposed a five-year action plan in the field of health. The proposal at least emphasises the limits to EU action and focuses on exchange of information and best practice. But it remains a proposal of dubious value and scant operational significance.

Doing less to do more

27

These recent initiatives are good examples of “policy posturing”—activities which consume significant administrative resources without bringing any clear added value. They are often brought forward by the Commission in response to pressures from other institutions. The European Council, for instance, specifically asked the Commission for a communication on sport at the Vienna Summit in December 1998, while MEPs have long been clamouring for more EU action in the field of health.

Of course, it will be argued that there are now a number of explicit references to such policies in the EU’s treaties.¹⁰ These are, as the Commission and many MEPs correctly point out, the legitimate hooks upon which new initiatives are hung. But such legalistic reasoning should not be the guide to rational policy discussion. If possible, such treaty provisions should be reviewed. Otherwise, they should be simply ignored, as is the case with many other under-used treaty provisions (such as the so-called “common” transport policy first enshrined in the Treaty of Rome).

¹⁰ See, in particular, Articles 3, 149 151 and 152

Above all, it is high time that politicians of all persuasions accept that limitations on EU action are indispensable if the Union is to become more efficient and recapture popular legitimacy. To suggest that the EU should become involved, like a national government, in everything from health to sports policy in order to demonstrate “relevance” to its citizens reveals a naïve belief that top-down action will cure the EU’s ills. In truth, unnecessary incursions in the nooks and crannies of domestic policies will only increase the chances of a popular backlash against the EU.

The EU should not aspire to pop-star popularity. It is, and will remain, an important but fairly distant entity in the daily concerns of most citizens. Most voters do not, and will not, love the EU. But they accept that there are many good reasons for European integration and many important policies which require a pooling of national sovereignty. They will lose confidence in this process, however, if integration is pursued in policy areas without clear justification, and if their local concerns are taken up at a level which they neither comprehend nor fully identify with.

Nor does the currently fashionable idea of “reinforced co-operation” (more commonly known as “flexibility” in the UK) provide much help, since it ducks altogether the issue of what the EU should and should not do. One of the curious features of the debate on reinforced co-operation is that it is

entirely focused on means (status of the veto, minimum number of member-states involved, and so on), rather than ends. Much political energy seems to be devoted to exploring the mechanics by which small groups of member-states might forge ahead in certain policy areas, with almost no reflection on what those policy areas might be. The debate is in large measure a reflection of unease in Paris and, to a lesser extent, Berlin, that an enlarged EU will weaken the capacity of the Franco-German partnership to set the pace in the Union.

The debate on reinforced co-operation is diverting attention from the crucial task at hand: how to make the present legal and institutional constellation in the EU supple, accountable and efficient enough to accommodate the massive challenge of a vastly expanded EU. It is folly to cast off the EU as it is presently structured in the name of a largely incoherent concept of intergovernmental reinforced co-operation. Rather, the challenge should be to make the tough decisions required to reform the EU as it is today. And that, above all, requires difficult decisions on those areas in which the EU should no longer be active, so that it can focus on those where it should be.

Measures to be abolished

The EU should not only stay out of some policy areas altogether, but also instigate a meaningful clear-out of specific unwarranted initiatives. It should, for instance, review the following: the directive on the keeping of animals in zoos; aspects of the regulation on standards for the transport of livestock on journeys exceeding eight hours; aspects of the directives laying down procedures for the provision of information in the field of technical standards and regulations; aspects of the directive on the conservation of natural habitats and of wild fauna and flora; and aspects of the EU's road safety policy (such as proposals on speed limits and on the use of seat belts).

This is not the occasion to attempt an exhaustive inventory of those measures which should be repealed. It is obvious, even from this short list of suggestions, that this will be a controversial task. The measures in the area of animal welfare, for instance, are the subject of passionate protest, not least in Britain. There is, as it happens, a strong case in favour of EU-wide measures for animal welfare, particularly for livestock being transported across EU borders. However, some laws on the statute book include detailed provisions which are almost impossible to enforce (such as rules on ventilation systems which must maintain a temperature range of 5-30°C) or which clearly have no bearing on the single market (such as animal welfare in zoos).

Doing less to do more

29

Of course, there is a plethora of prescriptive technical norms and standards which are simply unavoidable in a single market. Thus, for instance, the Commission has recently tabled a proposal to harmonise the maximum length of rigid buses and coaches at 15 metres. Whilst this may sound like the stuff of an over-active bureaucrat's dreams, it is in fact difficult to see how coaches can travel unhindered throughout the EU without some agreement on maximum dimensions, not least for safety considerations. Bizarrely, some of the more obscure technical specifications even emanate from non-EU bodies. Thus, for instance, the Commission invited the Council to agree a common position to be taken in a UN Economic Commission for Europe Working Party, dealing, of all things, with the regulations governing approval for vehicle headlamps.

So we should not react indiscriminately against any EU measures which sound unduly detailed, but rather apply a critical eye to distinguish between measures which are indispensable at an EU level, and those which the EU has adopted for no clear, objective reasons.

Furthermore, it is imperative that the Commission, when proposing new measures, should make increasing use of sunset clauses. Whilst the use of review clauses has become more widespread, the reviews are usually designed to allow for a strengthening or expansion of the measure in question. A sunset clause has the advantage of automatically extinguishing a measure unless an explicit decision is taken (by an administrative or legislative procedure which need not be laborious) to the contrary. Naturally, the use of sunset clauses can create difficulties, particularly since they can cause unwelcome uncertainty in the regulatory field. Yet the reluctance amongst officialdom, both in Brussels and in national capitals, should be overcome: sunset clauses are a key weapon in the battle against anachronistic or inappropriate legislation.

Reviewing internal procedures

A one-off spring cleaning of the EU statute book would, of course, be redundant if it were not followed up by a sustained change in attitude towards future legislation. This paper has already presented a number of procedural proposals, notably related to the Commission's annual work programme and the Parliament's handling of the EU budget, which would go some way to introducing new checks on legislative incontinence. But each EU institution should endeavour to introduce a series of specific internal procedures which would help to eliminate unwarranted initiatives.

The Commission should establish a central mechanism with the authority to block individual measures that commissioners propose to the college. At present, even under the reinforced powers enjoyed by President Prodi, the college of commissioners still tends to tolerate sub-standard proposals from individual commissioners, usually in the name of collegiate 'solidarity'. Interestingly, commissioners seem inclined to engage in hand-to-hand combat only when key national sensitivities are at stake. The recent internal wrangles over the Commission's proposal for the liberalisation of postal services, for instance, were entirely based on national divisions (in which the two French commissioners, from very different ideological backgrounds, fought against the proposal with particular vigour).

Logically, it should be the role of the president of the Commission, supported by the central machinery of the Secretariat General, to amend or reject proposals which have not been well justified. Indeed, one of the purposes behind the ongoing restructuring of the Commission is precisely to reinforce the co-ordinating role of the Secretariat General and so improve policy consistency. The recent scaling down of the interminable meetings between the commissioners' *cabinets* on every new proposal was designed to strengthen the hand of the presidential *cabinet* as a central clearing house.

Yet the record of the Prodi Commission suggests that this lesson has not yet been fully learnt. Prodi should now deploy the full resources of his *cabinet* and the Secretariat General to prevent unnecessary measures coming before the full

Doing less to do more

31

college. And the burden of proof on each commissioner in justifying his/her latest new initiative must become significantly heavier. As an alternative, a senior commissioner, ideally one of the vice-presidents, could be appointed to play a specific role in screening each new proposal. If he/she felt that a particular measure was not well justified, the arguments against proceeding could be put to the president for final arbitration. If necessary, the measures in question should be subject to independent impact assessments (business and environmental) by external experts before a final decision is made.

At the same time, the Commission must undertake to include serious analysis of the subsidiarity and proportionality tests for each and every proposal. It is already obliged to include an explanation of how these tests have been met. But the statutory sections on subsidiarity inserted at the beginning of each Commission proposal have become little more than good examples of disingenuous draftsmanship.

Equally, the Commission's annual reports on 'better lawmaking', first initiated in 1992, might as well be disposed of altogether. Whilst they were originally designed to demonstrate how vigorously the Commission was preventing unnecessary new legislation and repealing out-of-date measures, they are now little more than expressions of good intent devoid of real substance. The 1999 Better Lawmaking report, for instance, provided a predictable account of improved consultation procedures, of impact assessment programmes (eg the BEST task force on the impact of legislation on small businesses), of existing treaty protocols and inter-institutional agreements on subsidiarity and legislative drafting,¹¹ of progress in the SLIM initiative (Simpler Legislation for the Internal Market), and of the increasing use of the Commission's own website. The only measures listed as having been repealed were "13 Regulations concerning the European Agricultural Guidance and Guarantee Fund and fruit and vegetables". Distinctly under-whelming.

As for the European Parliament, the standing scrutiny committee proposed above needs to have sufficient political authority to question measures proposed by the Commission in its annual programme. It could serve as a kind of internal court of appeal, to which other specialised committees could refer for a ruling, before the Parliament's collective view on the annual programme is formed.

¹¹ *Conclusions of Edinburgh Council, December 1992; Inter-institutional Agreement of October 1993; Protocol of the Amsterdam treaty on the application of the principles of subsidiarity and proportionality; Inter-institutional Agreement of December 1998 on common guidelines for the quality of drafting of Community legislation*

The Parliament also needs to take steps to rein in the proliferation of unnecessary and often misguided amendments tabled on draft legislation by MEPs. A former British MEP, Graham Mather, has recently argued that far too many parliamentary amendments are either excessively detailed or presented for discussion well after the matters which they purport to influence have been decided elsewhere.¹² The latter is particularly true for the enormous

¹² *The European Parliament—Scope for Reform: A submission to the House of Lords European Communities Committee, April 2000*

number of declaratory reports and resolutions passed by the Parliament about events over which it has no control. For example, the Parliament's report on the EU's negotiating stance in the run-up to the Seattle WTO summit in late 1999 was adopted on 18 November 1999, after the Commission and Council had already agreed on the bulk of their strategy.

The result is that the balance of the Parliament's work has become increasingly lop-sided. An excessive amount of time and effort is dedicated to discussions on highly technical questions, whilst a wide-ranging political debate on the fundamental merits of new measures is lost. Mather calculates, for instance, that in 1997 the European Parliament voted on 4912 amendments of which 3004 were adopted. It is not difficult to see that in such a climate, political discussion on the desirability of European action is too often sacrificed for a technocratic approach.

Mather's solution is to establish a body similar to the Table Office in the House of Commons, under the direct authority of the Parliament's president. This body would primarily be responsible for producing judgements on the legality of particular amendments. Ideally, the Table Office could also be asked to submit particularly controversial amendments to impact assessments conducted by external experts. This would provide an essential service since, at present, the majority of MEPs are inclined to draft amendments without the slightest care about their practical consequences. Amendments are often drafted as an act of political showmanship, so that MEPs can demonstrate to their constituents, or to particular pressure groups, that they are living up to their promises. Indeed, some MEPs happily table amendments drafted for them by lobbyists or NGOs. This produces the worst mix of parliamentary influence—power without responsibility. Any mechanism which could force MEPs to appreciate the effects of their legislative amendments would be a welcome improvement.

Indeed, there may be a case for the creation of a single, independent EU agency, capable of providing rapid impact assessments for both draft

Doing less to do more

33

legislation proposed by the Commission and key legislative amendments tabled in the Parliament.

The Parliament is presently debating a paper prepared by one of its vice-presidents, James Provan MEP. This aims to increase the political oversight of the Parliament in its “plenary” formation by consigning as many votes as possible on technical amendments to a Grand Committee of MEPs. The proposals would, in theory, improve the ability of the Parliament as a whole to take a political stance on each new measure tabled. There is, of course, a risk that the plenary Parliament simply becomes a rubber stamp for decisions taken elsewhere. Thus any reform introduced along the lines of Provan’s plan would do well to incorporate the above proposals on the handling of the Commission’s annual work programme, on the formation of a standing scrutiny committee, and on the creation of a body analogous to the House of Commons’ Table Office.

The EU must also address the lack of transparency of the Council of Ministers. Many decisions of a strictly political nature are taken by officials, either within one of the many Council working groups, or within the Committee of Permanent Representatives (Coreper) which meets weekly to prepare ministerial meetings. The inability of ministers themselves to understand, yet alone control, complex and lengthy Council agendas is well-documented. It is difficult to imagine an environment in which political leadership is more easily usurped by civil servants. Meetings of the Council of Ministers are sporadic. Senior officials and diplomats, on the other hand, are in constant communication with each other.

It is inevitable that civil servants, who benefit most from such arrangements, should resist greater transparency. An insight into the thinking of Council bureaucrats was recently offered by its deputy secretary-general, Pierre de Boissieu, who said, when discussing openness before a committee of MEPs: “I think it is a good idea but I tend to fall asleep thinking about it”. He added “the Council is not meant to be a public platform; it is a decision-making body”, as if the two were somehow incompatible.

Ministers themselves are also easily persuaded that too much openness would destroy the unique negotiating forum provided by closed meetings of the Council. But the resulting political trade-offs often produce imperfect legislation. Furthermore, where ministers or their officials decide to add unnecessary regulatory details to draft legislation (a notorious practice in

the field of technical standards), their decisions usually go unchallenged. Frequently they then blame the resulting legislative pot-pourri on “Brussels”.

A number of innovations should be introduced to stop the Council from legislating in such an ad hoc manner.

First, the responsibilities of senior officials representing member-states in Brussels have become unsustainable. Through no fault of their own, the 15 permanent representatives now take decisions and strike deals on a huge range of issues which would, in a national setting, be the duty of senior ministers. There is a strong case for posting accountable members of national governments to Brussels in a permanent capacity. Placing, say, the Ministers for Europe in Brussels would transform the nature of the debates taking place within the Council. It would also allow for much greater political coverage, and therefore comprehension, of European issues in the domestic media.

Second, the EU needs a new General Affairs Council. This should be an oversight council comprised of ministers of deputy prime minister rank, and not of foreign ministers. It has long been an absurd anachronism that EU issues are dealt with by foreign ministries in national capitals. Placing political responsibility for the general flow of decision-making in the hands of senior domestic politicians, whose deputies would be ministers for Europe based in Brussels, would help to fill the present political vacuum.

Third, when the Council acts in a legislative capacity, it should do so in public; and a full record of the decisions should be published. To prevent the Council from agreeing unworkable legislation, ministers should be obliged to produce an explanation of how they intend to apply the law at home. This explanation should be submitted to domestic Parliaments within a strict deadline, shortly after the Council decision has been taken. The tendency to add extra regulatory burdens when directives are translated into domestic legislation (known as “gold-plating”) would be curtailed if all new EU laws clearly stated that they should not lead to any further regulation beyond that originally intended.

It is worth recalling that the Council is one of only three legislatures in the world in which laws are adopted behind closed doors—the others are to be found in Havana and Pyongyang. Council cognoscenti often reject calls for greater transparency on the basis that this would prevent the necessary trade-

Doing less to do more

35

offs from being negotiated behind closed doors. This is a facile response. Trade-offs and grubby political deals will always be struck in the corridors and bars of the Council, before or during the conduct of official business. Legislatures around the world manage to legislate in public on the basis of trade-offs negotiated elsewhere. There is no reason why the EU's Council should be unable to do the same.

Europe's constitutional debate

This paper has focused on practical ways of streamlining the EU's activities. It has deliberately shunned a more conceptual consideration of the principles of subsidiarity and proportionality. That is why no ink has been wasted on analysing the various treaty protocols, declarations, summit conclusions and inter-institutional agreements devoted to the scope and quality of EU legislation. But there are two wider issues of a constitutional nature which are directly relevant and cannot be ignored.

First, the longstanding proposal, recently restated by President Chirac, that the EU treaties should be radically redrafted to set out exactly which policy areas belong to which level of government. As the Commission has baldly stated "the treaty neither defines the concept of exclusive powers, nor enumerates the areas it covers... Consequently, the Union's powers are not set in stone".¹³ It is suggested that a reorganisation of the treaties would help to settle, once-and-for-all, the division of labour between local, regional, national and European government.

*¹³ Answer given
by President
Prodi to a
parliamentary
question from
the author,
March 2000*

The issue raises a central dilemma. The vast majority of the powers exercised at EU level are shared with member-states. The realm of exclusive EU powers is indeed difficult to define. Any attempt to clarify who is currently responsible for what would most probably yield an open-ended list of shared competences. Such an outcome would only help blur an already confused picture further.

Yet the need for greater clarity is overwhelming. To make progress, then, it might be better to take an intermediate step rather than aspire towards a definitive listing of competences. This might, for instance, take the form of a treaty declaration stating that certain policy areas—notably health, education, culture, tourism, employment and social policy—are the exclusive province of national authorities. In these areas, any action at European level should be confined to "soft" instruments such as exchange of best practice, bench-marking and peer review. Such action need not even take place within the EU institutions but could be the subject of issue-specific inter-governmental arrangements. Naturally, this would require the highly-

Doing less to do more

37

controversial deletion of the existing treaty references to these policy areas. But it is difficult to see how we can achieve greater clarity without the political will to take certain policy competences off-limits altogether. The High Level Working Group and the Commission's forthcoming white paper on governance should take a bold first step in this direction.

The second issue of constitutional importance is the proposal for a second legislative chamber at EU level, flanking the European Parliament, composed of national parliamentary delegates. This idea, usually labelled as an EU "senate", was proposed by France during the last inter-governmental conference and was recently resurrected by the German foreign minister, Joschka Fischer.¹⁴

It is an idea with many superficial attractions. Not least, it might help silence the endless (and usually ill-informed) carping from national parliamentarians about EU decision-making. By more fully implicating national politicians, the proposal might also increase the understanding of EU politics amongst the domestic political media, who tend to take their cue from national Parliaments.

But a European senate is likely to be both unworkable and constitutionally unnecessary. Unworkable, because all the evidence of nominated parliaments (such as the pre-1979 European Parliament) suggests that they suffer from chronic absenteeism. It is difficult to imagine why politicians elected on a domestic mandate would wish to invest serious time and effort in the work of a chamber far-removed from the everyday political concerns of their electorate. Constitutionally unnecessary, since the Council of ministers and the European Parliament already constitute the two legislative "chambers" of the EU. The need for a third is not evident. Furthermore, if the Council of Ministers were to reform itself in the manner suggested in this paper (public meetings, permanently-posted ministers for Europe in Brussels, and so on), the need for the direct involvement of national parliaments at EU level is further reduced.

However, there is one moment in the EU legislative cycle when national parliamentarians could become key players, in addition to their role as scrutineers of national governments. As already suggested, national parliamentarians could usefully join their colleagues in the European Parliament in considering the Commission's annual legislative programme. A delegation from each national parliament could be invited to hear the

¹⁴ *From Confederacy to Federation—Thoughts on the finality of European integration*, speech by Joschka Fischer, Humboldt University, May 2000

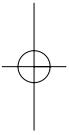
Commission's presentation of its annual programme to the European Parliament. The MPs could then be invited to pronounce on whether the specific measures proposed were justifiable at European level. The European Parliament would be obliged to take their views into account. If the delegations of national MPs collectively considered that a particular proposal failed the subsidiarity test, the European Parliament would be expected to vote against it unless it had strong reasons not to do so.

In this way, national MPs would be able to play an active role at the most crucial moment in the legislative cycle, when the Commission first seeks parliamentary approval for its proposals. By asking national MPs to participate in a clearly defined role, once a year, in a high-profile debate, the chances of their doing so in a committed manner would be enhanced. Naturally, a great deal of thought would need to be devoted to the detailed mechanics by which the national MPs would operate (voting procedures, and so on), but the principle is clear. Whilst there is little merit in the idea of a new, third chamber composed of national MPs, the case for involving them in the annual debate and vote on the Commission's legislative programme is strong.

Conclusion

Reculer pour mieux sauter—retreating in order to move forward—lies at the heart of the proposals made in this paper. The EU is in a muddle. Its institutions are over-stretched, unloved and rudderless. The breathtaking pace of integration over the last half century has inevitably taken its toll. It is time to pause for thought and undertake a critical review of the policies, tasks and competences which have accumulated since the Treaty of Rome was signed in 1957.

Stripping away those measures that have not worked at EU level, or should not have been elevated to the EU in the first place, should not be regarded as a destructive act. On the contrary, it should help re-establish the efficacy and legitimacy of the EU institutions. A failure to do so would make it nigh-impossible for the EU to strike out in new, justified directions in the future. That would be a high price to pay tomorrow for political timidity and inaction today.



Summary of main recommendations

- ★ *In order to identify and cut redundant legislation, programmes and budget lines, the EU should create a High Level Working Group composed of representatives from the Commission, the European Parliament and the Council of Ministers. The Group should aim to present the objectives of its work to the Nice Summit in December 2000 and to produce, by Summer 2001, a final report to coincide with the Commission's own white paper on governance.*
- ★ *The procedures for the presentation and scrutiny of the Commission's annual work programme should be overhauled. The Commission President's "State of the Union" speech should be accompanied by a detailed list of the proposed legislative and non-legislative measures, each justified and explained. The Parliament's committees should examine the proposals, and conduct annual hearings of commissioners. A delegation of national MPs should also examine the Commission's proposals, with the remit to identify measures which should not be taken up at European level. The annual work programme should then be subject to a detailed debate and vote by the Parliament in plenary session.*
- ★ *A standing scrutiny committee in the European Parliament—with appropriate budgetary and legal expertise—should be established to adjudicate on the admissibility of new EU proposals.*
- ★ *The European Parliament's procedures should be reformed in order to reduce the time spent debating technical amendments. The Parliament should establish a 'Table Office' to rule on the legality of amendments and, where necessary, to submit amendments to external, independent impact assessments.*
- ★ *Small budget lines should be reviewed and, where possible, abolished, as should all budget lines without a clear legal base. Specific budgets dedicated to non-core policy activities should be progressively eliminated.*
- ★ *The Commission's management responsibilities in overseas aid should be hived off to an independent external agency.*

- ★ *There should be a comprehensive review of so-called Community initiatives (Leader, Urban, Interreg and so on) and of the Commission's role in administering them.*
- ★ *There should be a wholesale review of the aims and effectiveness of EU social policy, including new guidelines on its limits.*
- ★ *EU competence in the fields of education, health, employment, culture, media, tourism and sports policy should be formally removed, either by eliminating the relevant treaty provisions or, for specific measures, by the imposition of sunset clauses.*
- ★ *A number of existing measures which are either over-detailed or impossible to enforce, or which have little bearing on the single market, should be repealed. The EU should also make wider use of sunset clauses to avoid redundant legislation.*
- ★ *The role of Commission's Secretariat General in systematically vetting all new proposals should be strengthened. One of the Commission vice-presidents could be put in charge of this task, with the president acting as a final arbiter. Where necessary, individual proposals should be subject to external, independent impact assessments.*
- ★ *Each new Commission proposal should include a substantive analysis, justifying why, on the grounds of proportionality/subsidiarity, EU-level action is necessary. The Commission should abandon its meaningless annual reports on "Better Lawmaking".*
- ★ *Ministers for Europe should be permanently posted in Brussels, replacing national permanent representatives to the EU in all discussions of political importance.*
- ★ *The General Affairs Council should become a genuine oversight body for the work of the Council of Ministers, and should be composed of Ministers with deputy prime minister rank.*
- ★ *Meetings of the Council, when acting as a legislature, should be held in public. Full reports of its proceedings should be published. Within a fixed deadline, ministers should be obliged to explain to domestic parliaments how they intend to implement legislation agreed in the Council.*

★